



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

June 7, 2005

Ms. Maureen R.M. Singleton
Bracewell & Patterson, L.L.P.
711 Louisiana Street, Suite 2900
Houston, Texas 77002-2781

OR2005-04969

Dear Ms. Singleton:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 225728.

The Region IV Education Service Center (the "center"), which you represent, received a request from Conroe Independent School District (the "district") for any and all documents relating to a named individual's employment with the district and enrollment in the center's Alternative Certification Program (the "ACP") for teachers. You argue that the submitted information is excepted from disclosure under sections 552.026, 552.101, and 552.114 of the Government Code and the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"). We have considered your arguments and reviewed the submitted information. We have also received and considered comments from the requestor's attorney. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student's parent. *See* 20 U.S.C. § 1232g(b)(1). "Education records" means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

Gov't Code § 552.206. In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. In this instance, however, you have submitted some of the requested information to this office for consideration. Therefore, we will consider whether this information is protected by FERPA.

FERPA defines "educational agency or institution" to mean any public or private agency or institution which is the recipient of funds under any applicable program administered by the U.S. Secretary of Education if the educational institution provides educational services or instruction, or both, to students. 20 U.S.C. 1232g (a)(3); 34 C.F.R. § 99.1(a) (defining education agencies or institutions to which FERPA applies). You represent the center receives federal funds under an applicable program. You state the center provides educational services and instruction to ACP participants such as the individual at issue in the present request. Based upon your representations, we conclude that the center is an "educational institution" for purposes of FERPA. See 34 C.F.R. § 99.1(d) (if educational agency or institution receives funds under one or more applicable programs FERPA applies to recipient as a whole).

The submitted documents in Exhibit B relate to the application and enrollment of the named individual in the ACP. The submitted documents in Exhibit C related to the individual's ACP certification requirements and his satisfaction of those requirements through professional training coordinated by the center. The requestor's attorney contends that the documents responsive to its request are employment records and not subject to protection under FERPA. However, Exhibits B and C directly relate to the individual at issue and are maintained by the center. Thus, Exhibits B and C are education records for purposes of FERPA. 20 U.S.C. § 1232g(a)(4)(A); see C.F.R. § 99.3 (defining "education records" under FERPA); *Belanger v. Nashua, New Hampshire, Sch. Dist.*, 856 F. Supp. 40 (D.N.H. 1994) (applying "education records" definition broadly).

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." *See* Open Records Decision Nos. 332 (1982), 206 (1978). In this case, the requestor knows the identity of the individual identified in the submitted information; therefore, withholding only portions of the submitted education records would not suffice to avoid the release of personally identifiable information as mandated by FERPA. Accordingly, these education records are generally confidential in their entirety under FERPA.

However, an educational agency or institution may disclose personally identifiable information from an education record of a student if the disclosure is to other school officials within the agency or institution whom the agency or institution has determined to have legitimate educational interests. *See* 34 C.F.R. § 99.31(a)(1). You state that "[d]uring the certification process, and as part of the requirements for the ACP, an ACP enrollee must participate in internships and practicum experiences at a school district." You state the individual at issue received the experiential portion of his training at the district. Thus, FERPA permits disclosure of the submitted education records to the district if the district's request is made in its capacity as a party acting for the center with regard to the individual's ACP training. Otherwise, the center must withhold the submitted education records in accordance with FERPA.

In summary, the center must disclose the submitted information to the district if the district is acting on behalf of the center with regard to the individual's ACP training. Otherwise, the center must withhold the submitted education records.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the

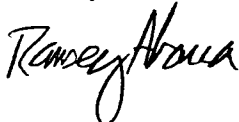
Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ramsey A. Abarca
Assistant Attorney General
Open Records Division

RAA/jev

Ref: ID# 225728

Enc. Submitted documents

c:	Ms. Kathy Sharples Director of Human Resources- Elementary Conroe Independent School District 702 North Thompson Conroe, Texas 77301 (w/o enclosures)	Ms. Carolyn Hanahan Feldman & Rogers, L.L.P. 5718 Westheimer, Suite 1200 Houston, Texas 77057 (w/o enclosures)
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